

**Christina Carolina Gerarda Johanna Verstappen v Ketua Polis
Negara, Malaysia & Ors**

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HIGH COURT (KUALA LUMPUR) — CIVIL SUIT
NO WA-21NCvC-108-11 OF 2020
ROZ MAWAR J
29 JULY 2025

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Police — Duties of police — Breach — Plaintiff's daughter's death classified as suicide — Coroner found that deceased's death was accidental rather than suicide or murder — High Court replaced coroner's finding with a verdict of 'death by person or persons unknown' — Plaintiff filed action against defendants for negligence and breach of statutory duties by police — Whether plaintiff succeeded in her claims that defendants failed to adhere to standard investigation procedure — Whether there were flagrant breaches of standard operating procedures by police officers involved — Whether police owed duty of care to conduct investigations with reasonable diligence and professionalism — Whether police breached duty of care — Whether police breached statutory duties — Whether malfeasance, misfeasance and non-feasance in public office proven against defendants — Whether causation and damages proven — Whether plaintiff entitled to general damages, aggravated damages and exemplary damages — Whether mandamus ought to be awarded — Criminal Procedure Code ss 107A, 112 & 328 to 341 — Government Proceedings Act 1956 ss 5 & 6 — Penal Code s 302 — Police Act 1967 ss 3(3) & 20

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On 7 December 2017, a lifeless body of Ivana Esther Robert Smith ('the deceased') was discovered on the balcony of Unit 6-5 Cap Square Residences and at the material time, she was unclothed. Two days later, the deceased's mother ('the plaintiff') was asked by the police to identify the deceased at the morgue of Hospital Kuala Lumpur. The plaintiff was informed by the defendants and one Sergeant Haliza that the death was classified as suicide, with the sudden death report ('the SDR') asserting that the cause of death was either natural or self-inflicted (suicide). Dissatisfied with this finding, the plaintiff made every effort to pursue the matter further and such effort was no in vain when an inquest was commenced on 8 August 2018 before the coroner under s 328 to s 341 of the Criminal Procedure Code ('the CPC'). On 8 March 2019, the coroner delivered her verdict of 'misadventure' and found that the death was accidental rather than suicide or murder. Aggrieved, the plaintiff filed an appeal and at the end of the appeal, the High Court overturned the coroner's decision and replaced it with a verdict of 'death by person or persons unknown' ('the 2019 High Court order'). Following the 2019 High Court order, the case was reclassified as murder under s 302 of the Penal Code. Although the investigating officer ('the second defendant') testified that the

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- A investigations were still continuing, but in reality, the investigation had effectively come to a standstill with no meaningful progress since 2019. The plaintiff then filed the present claim against the defendants for breach of duty of care and breach of statutory duties. The plaintiff submitted that the decision that the death of the deceased was suicide (as per the SDR) was hastily made
- B without conducting an initial summary investigation to properly assess the circumstances and classification of the case. The plaintiff contended that the officer in charge was required to make an initial determination whether the death was a natural occurrence or a suspected crime based on the facts and evidence directly or indirectly available from the scene. The issues that arose for
- C the court's determination were whether the plaintiff succeeded in her claims that the defendants had failed to adhere to the standard investigation procedure and/or whether there were flagrant breaches of the standard operating procedures ('the SOP') by the police officers involved.
- D **Held**, entering judgment for the plaintiff against the defendants jointly and severally with costs of RM100,000, awarding damages in the total sum of RM1.1m, declaring that the defendants failed to carry out their duties as per the 2019 High Court order, and awarding mandamus:
- E (1) Upon careful consideration of the evidence, the court determined that the classification of the deceased's death case as suicide through the SDR was made without adequate preliminary investigation into the suspicious circumstances surrounding the deceased's death. Evidence showed that
- F the second defendant, a senior police officer with experience who was first to witness the deceased's body, failed to reasonably suspect that the circumstances — an unclothed young woman found dead after falling from a height — naturally raised immediate concerns about the possibility of foul play. The evidence before the court indicated that
- G reasonable grounds existed to warrant further inquiry before reaching such a conclusion. Significantly, Sergeant Haliza had initially suspected homicide rather than suicide. However, despite indications of potential criminal involvement, the second defendant promptly and arbitrarily classified the incident as suicide on the same day. This premature classification fundamentally compromised the investigation from its inception (see paras 8–9).
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- I (2) PDRM had the statutory duty under s 20 of the Police Act 1967 ('Act 344') to investigate crimes properly. As provided for in s 3(3) of Act 344, the duty of care owed by PDRM extended to preserve public order and ensure that criminal conduct was promptly prevented, detected, and prosecuted. The procedural requirements and investigative standards could be found at ss 107A and 112 of the CPC. In the present case, law enforcement officers of PDRM, had a duty of care to conduct investigations with reasonable diligence and professionalism. More so when the deceased's death was unexplained or suspicious. This duty

- extended to foreseeable parties such as the plaintiff, who as the mother of the deceased, relied on PDRM to conduct a diligent and thorough investigation (see paras 40–41). A
- (3) The evidence overwhelmingly established that the defendants breached their duty of care. The second defendant had conducted himself in a manner that demonstrated blatant disregard for and gross dereliction of duties incumbent upon him. The breach was manifestly evident through the defendants' failure to adhere to the requisite standards of reasonable diligence, impartiality and professional competence. The court found that specific breaches were proven on a balance of probabilities which were: (a) premature classification of the case as suicide; (b) crime scene management failures; (c) evidence preservation failures; (d) inadequate witness/suspect handling; (e) forensic evidence neglect; and (f) expert evidence dismissal. The second defendant had prematurely concluded the case as suicide without an objective analysis of suspicious circumstances (see paras 42–43 & 45). B C D
- (4) The plaintiff's emotional distress, mental anguish, and prolonged uncertainty of her daughter's death, and the consequent inability to achieve closure flowed directly from the defendants' failure to conduct a diligent investigation. The defendants' negligence denied the plaintiff the opportunity to seek redress and accountability, compounding her grief and prolonging her suffering. The court found that the harm suffered by the plaintiff was a direct and foreseeable consequence of the defendants' breach of duty (see paras 46–47). E
- (5) Evidence in the present case established breaches of statutory duty under ss 107A and 112 of the CPC as well as the SOPs for the death investigation of the deceased. The court was mindful of the principles established in *Robinson v Chief Constable of West Yorkshire Police* [2018] 2 WLR 595, where the UK Supreme Court held that while police generally owed no duty of care in the manner of investigation, exceptions may arise in specific circumstances. However, the present case was distinguishable as it concerned not merely the manner of investigation, but fundamental failures to investigate at all in circumstances that clearly warranted such investigation. The court found that the breaches of statutory duty on the part of the defendants had caused the plaintiff's continued suffering over the inability to obtain closure on her daughter's cause of death (see paras 52–54, 56 & 58). F G H
- (6) The 2019 High Court order was clear and unambiguous. It directed that the case be reclassified as 'death by person or persons unknown' and compelled the AGC to direct the PDRM to recommence investigations as a murder case under s 302 of the Penal Code. Despite this clear judicial directive, the evidence showed that the defendants had failed to comply meaningfully with the 2019 High Court order. The investigation had I

- A** effectively stagnated with no significant progress since the 2019 High Court order. This failure to comply with a clear judicial directive constituted contempt of court and breach of statutory duties on the part of the defendants. The courts had inherent powers to ensure compliance with judicial orders. Based on the directive of the 2019 High Court order and the evidence that there was non-compliance, there were bases why mandamus ought to be awarded (see paras 59–60 & 62–65).
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- C** (7) Malfeasance in public office involved the commission of an unlawful act in an official capacity. The defendants' premature classification of this case as suicide despite clear indication of potential homicide, constituted an unlawful exercise of discretion that prejudiced the investigation. Misfeasance in public office involved the improper performance of a lawful act. The defendants' handling of the investigation, whilst within their authority, was conducted improperly and negligently, failing to meet required standards. The investigation was marked by significant procedural deficiencies and departures from established investigative protocols. Non-feasance in public office involved the failure to perform a required duty. The defendants had failed to properly secure and examine the crime scene. The evidence established that non-feasance arose from the failure to perform duties mandated by law. In the premises, the court found that the evidence in the present case supported the findings of malfeasance, misfeasance and non-feasance on the part of the defendants (see paras 66, 73, 79 & 85).
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- F** (8) The court found that all the defendants were liable, albeit with different bases and degrees of responsibility. The second defendant was primarily personally liable for direct acts and omissions in negligence, breach of statutory duty and non-compliance with the 2019 High Court order. The first defendant was vicariously liable for the second defendant's acts and omissions plus direct institutional liability. The third defendant had limited liability for the specific administrative failures. The fourth defendant was vicariously liable only under the statutory framework, ie ss 5 and 6 of the Government Proceedings Act 1956 (see paras 103 & 105).
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- H** (9) Having considered all the evidence and submissions, the court assessed and determined the appropriate quantum damages as followed: (a) general damages — RM500,000 for emotional distress, mental anguish and loss of closure which were from the investigative failures and associated financial expenses; (b) aggravated damages — RM300,000 for the high-handed and oppressive conduct on the part of the defendants and for institutional indifference to the plaintiff's suffering and failure to treat the matter with appropriate gravity; and (c) exemplary damages — RM300,000 to punish gross misconduct in public office, to deter similar failures in the future and to vindicate constitutional principles and the
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rule of law. With respect to mandamus, the court directed as followed: (i) the first defendant to remove the second defendant from the current task force; (ii) PDRM to re-commence the investigation as per the 2019 High Court order; and (iii) PDRM to brief the AGC every three months from the date of the judgment of the present case on the updates of the investigation (see paras 110 & 113).

[Bahasa Malaysia summary]

Pada 7 Disember 2017, mayat Ivana Esther Robert Smith ('si mati') telah ditemui di balkoni Unit 6–5 Cap Square Residences dan pada ketika itu, dia tidak berpakaian. Dua hari kemudian, ibu si mati ('plaintif') diminta oleh pihak polis untuk mengenal pasti si mati di rumah mayat Hospital Kuala Lumpur. Plaintif dimaklumkan oleh defendan-defendan dan Sarjan Haliza bahawa kematian tersebut diklasifikasikan sebagai bunuh diri, dengan laporan mati mengejut ('SDR') menyatakan bahawa punca kematian adalah sama ada semula jadi atau dilakukan sendiri (bunuh diri). Tidak berpuas hati dengan penemuan ini, plaintif berusaha sedaya upaya untuk mencabar penemuan tersebut dan usaha tersebut tidak sia-sia apabila inkues dimulakan pada 8 Ogos 2018 di hadapan Koroner di bawah s 328 hingga s 341 Kanun Tatacara Jenayah ('KTJ'). Pada 8 Mac 2019, koroner telah membuat keputusan 'misadventure' dan mendapati bahawa kematian tersebut adalah akibat kemalangan dan bukannya bunuh diri atau pembunuhan. Plaintif yang terkilan telah memfailkan rayuan dan pada akhir rayuan, Mahkamah Tinggi membatalkan keputusan koroner dan menggantikannya dengan keputusan 'death by person or persons unknown' ('perintah Mahkamah Tinggi 2019'). Berikutan perintah Mahkamah Tinggi 2019 tersebut, kes tersebut telah diklasifikasikan semula sebagai pembunuhan di bawah s 302 Kanun Keseksaan. Walaupun pegawai penyiasat ('defendan kedua') memberi keterangan bahawa siasatan masih diteruskan, tetapi pada hakikatnya, siasatan telah terhenti tanpa apa-apa kemajuan yang bermakna sejak 2019. Plaintif kemudian memfailkan tuntutan semasa terhadap defendan-defendan atas pelanggaran kewajipan berjaga-jaga dan pelanggaran kewajipan berkanun. Plaintif berhujah bahawa keputusan bahawa kematian si mati adalah bunuh diri (mengikut SDR tersebut) telah dibuat secara tergesa-gesa tanpa menjalankan siasatan ringkasan awal untuk menilai keadaan dan klasifikasi kes dengan betul. Plaintif berhujah bahawa pegawai yang bertanggungjawab dikehendaki membuat penentuan awal sama ada kematian tersebut merupakan kejadian semula jadi atau jenayah yang disyaki berdasarkan fakta dan keterangan yang tersedia secara langsung atau tidak langsung dari tempat kejadian. Isu-isu yang timbul untuk penentuan mahkamah adalah sama ada plaintif berjaya dalam dakwaannya bahawa defendan-defendan telah gagal mematuhi prosedur siasatan standard dan/atau sama ada terdapat pelanggaran prosedur operasi standard ('SOP') yang ketara oleh pegawai polis yang terlibat.

Diputuskan, memasukkan penghakiman untuk plaintif terhadap

- A defendan-defendan secara bersama dan berasingan dengan kos sebanyak RM100,000, memberikan ganti rugi dengan jumlah keseluruhan sebanyak RM1.1 juta, mengisytiharkan bahawa defendan-defendan gagal menjalankan kewajipan mereka seperti yang ditetapkan dalam perintah Mahkamah Tinggi 2019, dan mengawardkan mandamus:
- B (1) Setelah mempertimbangkan keterangan dengan teliti, mahkamah memutuskan bahawa pengelasan kes kematian si mati sebagai bunuh diri melalui SDR tersebut dibuat tanpa siasatan awal yang mencukupi terhadap keadaan mencurigakan yang menyelubungi kematian si mati.
- C Keterangan menunjukkan bahawa defendan kedua, seorang pegawai polis kanan yang berpengalaman yang merupakan orang pertama yang menyaksikan mayat si mati, gagal mengesyaki secara munasabah bahawa keadaan tersebut — seorang wanita muda yang tidak berpakaian ditemui mati selepas jatuh dari tempat yang tinggi — secara semula jadi
- D menimbulkan kebimbangan segera tentang kemungkinan perbuatan khianat. Keterangan di hadapan mahkamah menunjukkan bahawa terdapat alasan yang munasabah untuk mewajarkan siasatan lanjut sebelum mencapai kesimpulan sedemikian. Apa yang lebih penting, Sarjan Haliza pada mulanya mengesyaki pembunuhan dan bukannya
- E bunuh diri. Walau bagaimanapun, walaupun terdapat petunjuk potensi penglibatan jenayah, defendan kedua dengan segera dan sewenang-wenangnya mengklasifikasikan kejadian tersebut sebagai bunuh diri pada hari yang sama. Pengelasan pramatang ini secara asasnya menjejaskan siasatan sejak awal lagi (lihat perenggan 8–9).
- F (2) PDRM mempunyai tugas berkanun di bawah s 20 Akta Polis 1967 ('Akta 344') untuk menyiasat jenayah dengan betul. Seperti yang diperuntukkan dalam s 3(3) Akta 344, kewajipan berjaga-jaga yang menjadi tanggungjawab PDRM diperluaskan untuk memelihara
- G ketenteraman awam dan memastikan bahawa kelakuan jenayah dicegah, dikesan dan didakwa dengan segera. Keperluan prosedur dan piawaian penyiasatan boleh didapati di dalam ss 107A dan 112 KTJ. Dalam kes semasa, pegawai penguatkuasa undang-undang PDRM mempunyai kewajipan berjaga-jaga untuk menjalankan siasatan dengan usaha dan profesionalisme yang munasabah. Lebih-lebih lagi apabila kematian si
- H mati tidak dapat dijelaskan atau mencurigakan. Kewajipan ini diperluaskan kepada pihak-pihak yang boleh dijangka seperti plaintif, yang sebagai ibu si mati, bergantung pada PDRM untuk menjalankan siasatan yang tekun dan teliti (lihat perenggan 40–41).
- I (3) Keterangan yang diperolehi secara keseluruhannya membuktikan bahawa defendan-defendan telah melanggar kewajipan berjaga-jaga mereka. Defendan kedua telah berkelakuan dengan cara yang menunjukkan pengabaian yang terang-terangan dan pengabaian yang melampau terhadap kewajipan yang dipertanggungjawabkan kepadanya.

- Pelanggaran tersebut jelas terbukti melalui kegagalan defendan-defendan untuk mematuhi piawaian usaha yang munasabah, kesaksamaan dan kecekapan profesional yang diperlukan. Mahkamah mendapati bahawa pelanggaran khusus telah dibuktikan di atas imbalan kebarangkalian iaitu: (a) pengelasan pramatang kes tersebut sebagai bunuh diri; (b) kegagalan pengurusan tempat kejadian jenayah; (c) kegagalan pemeliharaan keterangan; (d) pengendalian saksi/suspek yang tidak mencukupi; (e) pengabaian keterangan forensik; dan (f) penolakan keterangan pakar. Defendan kedua telah menyimpulkan kes tersebut sebagai bunuh diri secara pramatang tanpa analisis objektif terhadap keadaan yang mencurigakan (lihat perenggan 42–43 & 45). A
- (4) Tekanan emosi, penderitaan mental, dan ketidakpastian berpanjangan plaintif terhadap kematian anak perempuannya, dan ketidakupayaan untuk mencapai penyelesaian berpunca secara langsung daripada kegagalan defendan-defendan untuk menjalankan siasatan yang teliti. Kecuaian defendan-defendan telah menafikan peluang plaintif untuk mendapatkan pembelaan dan akauntabiliti, memburukkan lagi kesedihannya dan memanjangkan penderitaannya. Mahkamah mendapati bahawa kemudaratan yang dialami oleh plaintif adalah akibat langsung dan boleh dijangka daripada pelanggaran kewajipan defendan-defendan (lihat perenggan 46–47). B C
- (5) Keterangan dalam kes semasa membuktikan pelanggaran kewajipan berkanun di bawah ss 107A dan 112 KTJ serta SOP untuk siasatan kematian si mati. Mahkamah mengambil berat tentang prinsip-prinsip yang ditetapkan dalam kes *Robinson v Chief Constable of West Yorkshire Police* [2018] 2 WLR 595, di mana Mahkamah Agung UK memutuskan bahawa walaupun polis secara amnya tidak mempunyai kewajipan berjaga-jaga dalam cara penyiasatan, pengecualian mungkin timbul dalam keadaan tertentu. Walau bagaimanapun, kes semasa boleh dibezakan kerana ia bukan sahaja melibatkan cara penyiasatan, tetapi juga turut melibatkan kegagalan asas untuk menyiasat sama sekali dalam keadaan yang jelas memerlukan penyiasatan sedemikian. Mahkamah mendapati bahawa pelanggaran kewajipan berkanun di pihak defendan-defendan telah menyebabkan plaintif terus menderita kerana ketidakupayaannya untuk mendapatkan jawapan berkaitan punca kematian anak perempuannya (lihat perenggan 52–54, 56 & 58). D E F
- (6) Perintah Mahkamah Tinggi 2019 tersebut adalah jelas dan tidak meragukan. Ia mengarahkan agar kes tersebut diklasifikasikan semula sebagai ‘death by person or persons unknown’ dan memaksa Jabatan Peguam Negara untuk mengarahkan PDRM untuk memulakan semula siasatan sebagai kes pembunuhan di bawah s 302 Kanun Keseksaan. Walaupun dengan kewujudan arahan kehakiman yang jelas ini, keterangan menunjukkan bahawa defendan-defendan telah gagal G H I

- A mematuhi perintah Mahkamah Tinggi 2019 tersebut dengan sewajarnya. Siasatan tersebut secara efektifnya terbantut tanpa apa-apa kemajuan yang ketara sejak perintah Mahkamah Tinggi 2019 tersebut. Kegagalan untuk mematuhi arahan kehakiman yang jelas ini merupakan penghinaan mahkamah dan pelanggaran kewajipan statutori di pihak
- B defendan-defendan. Mahkamah mempunyai kuasa sedia ada untuk memastikan pematuhan terhadap perintah kehakiman. Berdasarkan arahan perintah Mahkamah Tinggi 2019 tersebut dan keterangan bahawa terdapat ketidakpatuhannya, maka terdapat asas mengapa mandamus harus diberikan (lihat perenggan 59–60 & 62–65).
- C (7) Malfeasans dalam jawatan awam melibatkan pelakuan tindakan yang menyalahi undang-undang dalam kapasiti rasmi. Klasifikasi pramatang defendan-defendan terhadap kes ini sebagai bunuh diri walaupun terdapat petunjuk jelas tentang potensi pembunuhan, merupakan satu
- D pelaksanaan budi bicara yang menyalahi undang-undang yang menjejaskan siasatan. Misfeasans dalam jawatan awam melibatkan pelaksanaan tindakan yang sah secara tidak wajar. Pengendalian siasatan oleh defendan-defendan, semasa dalam bidang kuasa mereka, dijalankan secara tidak wajar dan cuai, gagal memenuhi piawaian yang diperlukan.
- E Siasatan tersebut ditandai dengan kekurangan prosedur yang ketara dan penyimpangan daripada protokol penyiasatan yang ditetapkan. Non-feasans dalam jawatan awam melibatkan kegagalan untuk melaksanakan tugas yang diperlukan. Defendan-defendan telah gagal untuk memelihara dan memeriksa tempat kejadian jenayah dengan betul. Keterangan membuktikan bahawa non-feasans timbul daripada
- F kegagalan untuk melaksanakan tugas yang diamanahkan oleh undang-undang. Berdasarkan premis-premis tersebut, mahkamah mendapati bahawa keterangan dalam kes semasa menyokong dapatan malfeasans, misfeasans dan non-feasans di pihak defendan-defendan (lihat perenggan 66, 73, 79 & 85).
- G (8) Mahkamah mendapati bahawa semua defendan bertanggungjawab, walaupun dengan asas dan tahap tanggungjawab yang berbeza. Defendan kedua bertanggungjawab secara peribadi terutamanya atas
- H tindakan langsung dan peninggalan dalam kecuaian, pelanggaran kewajipan statutori dan ketidakpatuhan terhadap perintah Mahkamah Tinggi 2019 tersebut. Defendan pertama bertanggungjawab secara vikarius atas tindakan dan peninggalan defendan kedua serta liabiliti institusi langsung. Defendan ketiga mempunyai liabiliti terhad untuk
- I kegagalan pentadbiran tertentu. Defendan keempat hanya bertanggungjawab secara vikarius di bawah rangka kerja statutori, iaitu ss 5 dan 6 Akta Prosiding Kerajaan 1956 (lihat perenggan 103 & 105).
- (9) Setelah mempertimbangkan semua keterangan dan hujah, mahkamah menilai dan menentukan kuantum ganti rugi yang sesuai seperti berikut:

- (a) ganti rugi am — RM500,000 untuk tekanan emosi, penderitaan mental dan kehilangan penutupan yang disebabkan oleh kegagalan penyiasatan dan perbelanjaan kewangan yang berkaitan; (b) ganti rugi teruk — RM300,000 untuk kelakuan yang keterlaluan dan menindas pihak defendan-defendan dan untuk ketidakpedulian institusi terhadap penderitaan plaintif dan kegagalan untuk menangani perkara tersebut dengan sewajarnya; dan (c) ganti rugi teladan — RM300,000 untuk menghukum salah laku berat dalam jawatan awam, untuk mencegah kegagalan yang serupa pada masa hadapan dan untuk mempertahankan prinsip perlembagaan dan kedaulatan undang-undang. Berkenaan dengan mandamus, mahkamah mengarahkan seperti berikut: (i) defendan pertama untuk mengeluarkan defendan kedua daripada pasukan petugas semasa; (ii) PDRM untuk memulakan semula siasatan mengikut perintah Mahkamah Tinggi 2019 tersebut; dan (iii) PDRM untuk memberi taklimat kepada Jabatan Peguam Negara setiap tiga bulan dari tarikh penghakiman kes semasa mengenai kemas kini siasatan (lihat perenggan 110 & 113).]

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Cases referred to

- Ashley v Chief Constable of Sussex Police (Sherwood intervening); Ashley and another v Chief Constable of Sussex Police (Sherwood intervening)* [2008] 2 WLR 975, HL (refd)
- Bala Krishnan Appala Naidu v Ketua Inspektor Prabakaran Shanmugam & Ors (No 2)* [2010] MLJU 2223; [2011] 2 CLJ 890, HC (refd)
- Datuk Seri Khalid bin Abu Bakar & Ors v N Indra al/ P Nallathamby (the administrator of the estate and dependent of Kugan a/l Ananthan, deceased) and another appeal* [2015] 1 MLJ 353, CA (refd)
- Gan Kim Thye v The Union Omnibus Co Ltd* [1969] 1 MLJ 186 (refd)
- Government of Malaysia & Ors v Jumat bin Mahmud & Anor* [1977] 2 MLJ 103, FC (refd)
- Hill v Chief Constable of West Yorkshire* [1988] 2 All ER 238, HL (refd)
- Hu Sepang v Keong On Eng & Ors* [1991] 1 MLJ 440, HC (refd)
- Jay Laxmi Salt Works (P) Ltd v The State of Gujarat* 1994 SCC (4) 1, SC (refd)
- Joseph a/l Anthony (estate administrator Sebastian a/l Joseph, deceased) & Anor v Dr Muhamad Arif bin Mohamad Rasat & Ors* [2023] MLJU 1346; [2023] 8 CLJ 234, HC (distd)
- Kent v Griffiths and other* [2001] QB 36, CA (refd)
- Kerajaan Malaysia & Ors v Lay Kee Tee & Ors* [2009] 1 MLJ 1; [2009] 1 CLJ 663, FC (refd)
- Ley v Hamilton* (1935) 153 LT 384 (refd)
- Michael and others v Chief Constable of South Wales Police and another (Refuge and Liberty intervening)* [2015] 2 All ER 635, SC (refd)
- Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd, The Wagon Mound* [1961] 1 All ER 404, PC (refd)

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- A** *Robinson v Chief Constable of West Yorkshire Police* [2018] 2 WLR 595, SC (distd)
Tan Chye Choo & Ors v Chong Kew Moi [1966] 2 MLJ 4, FC (refd)
Thayanantha Rao all Bala Khrishna v Sjn Muhammad Izwan bin Izham & Ors [2024] 11 MLJ 447, HC (folld)
- B** *Three Rivers District Council and others v Governor and Company of the Bank of England and Cross (No 3)* [2000] 2 WLR 1220, HL (folld)
Zaidah bt Ismail v Inspektor Rabiatal Adawiyah bt Mohd Noor & Ors and another appeal [2021] MLJU 2109, CA (refd)
- C** **Legislation referred to**
Criminal Procedure Code ss 107A, 112, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, Chapter 32
Government Proceeding Act 1956 ss 5, 6
Penal Code s 302
- D** Police Act 1967 ss 3(3), 20
Sankara Narayanan all Sankaran Nair (with Narendran Letchiemanan and Wong Guo Jin) (SN Nair & Partners) for the plaintiff.
- E** *Nur Ezdiani bt Roleb (with Siti Aishah bt Ramlan, Nuur Zul Izzati bt Zulkipli and Mohd Radzi Shah bin Abd Razak) (Senior Federal Counsel, Attorney General's Chamber) for the defendants.*

Roz Mawar J:

- F** [1] This case arises from the tragic death of Ivana Esther Robert Smith (the deceased), an 18-year-old Dutch national who was the biological daughter of the plaintiff. The deceased had been living with her grandparents in Penang for 13 years before moving to Kuala Lumpur to pursue a career as a model.
- G** [2] On 7 December 2017, the deceased's body was discovered on the balcony of Unit 6–5 Cap Square Residences, No 2 Persiaran Cap Square, Off Jalan Dang Wangi, 50300 Kuala Lumpur at approximately 2pm. She was unclothed.
- H** [3] On the same day 7 December 2017 in the evening, the plaintiff received the news of the deceased's demise. The plaintiff immediately embarked on the journey to Kuala Lumpur to verify the tragic incident, identify the deceased and accordingly claim her.
- I** [4] Upon arrival on 9 December 2017, the plaintiff was asked to identify the deceased at the morgue of Hospital Kuala Lumpur ('HKL'). The plaintiff was informed by the defendants and one Sergeant Haliza that the deceased's nude body was discovered on the balcony of Unit 6–5 Cap Square Residence and

that her death was classified as suicide, with the sudden death report ('SDR') asserting that the cause of death was either natural or self-inflicted (suicide).

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[5] This court evaluates the evidence to determine whether the plaintiff succeeds in her claims that the defendants had failed to adhere to the standard investigation procedure and/or whether there were flagrant breaches of the standard operating procedures ('SOP') by the police officers involved.

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[6] The plaintiff submitted that the decision that it was suicide as per the SDR showed was hastily made without conducting an initial summary investigation to properly assess the circumstances and classification of the case. The plaintiff contended that it was required that the officer in charge make an initial determination whether the death was a natural occurrence or a suspected crime based on the facts and evidence directly or indirectly available from the scene.

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INITIAL POLICE INVESTIGATION

[7] Following the discovery, the Royal Malaysian Police ('PDRM') commenced investigation. On 7 December 2017, police officers from IPD Dang Wangi, including the second defendant, attended the scene. The initial investigation revealed that:

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- (a) the deceased was found unclothed on the balcony of Unit 65 on 7 December 2017 at approximately 2pm;
- (b) CCTV footage showed the deceased with a man and woman which Cap Square Residence management identified as residents of Unit 20–5 of the same building several hours in the lift lobby the night before;
- (c) the residents of Unit 20–5 were identified as Alexander William Johnson and Lunara Almazkyzy ('Alex and Luna'). They were questioned and subsequently detained from 8 December 2017 to 11 December 2017;
- (d) an autopsy was conducted on 8 December 2017 by DrZunaizah bt Hilmi and Dr Nurliza bt Abdullah at HKL;
- (e) the autopsy findings indicated the cause of death as:
 - (i) chest and andomino-pelvic injuries; and
 - (ii) consistent with a fall from height.
- (f) a sudden death report (SDR) was opened on 9 December 2017.

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[8] Upon careful consideration of the evidence, this court determines that the classification of this case as suicide through an SDR was made without adequate preliminary investigation into the suspicious circumstances

A surrounding the deceased's death. Evidence showed that the second defendant, a senior police officer with experience who was first to witness the deceased's body, failed to reasonably suspect that the circumstances — an unclothed young woman found dead after falling from a height — naturally raised immediate concerns about the possibility of foul play. The evidence before this court indicates that reasonable grounds existed to warrant further inquiry before reaching such a conclusion,

[9] Significantly, Sergeant Haliza had initially suspected homicide rather than suicide. However, despite indications of potential criminal involvement, the second defendant promptly and arbitrarily classified the incident as suicide on the same day. This premature classification fundamentally compromised the investigation from its inception.

D CRITICAL INVESTIGATIVE FAILURES

[10] The evidence reveals numerous critical failures in the initial investigation:

- E (a) the failure to secure Unit 20–5: there was a failure on the part of the second defendant and PDRM to cordon off Unit 20–5 where the deceased was last seen alive, despite it being a potential crime scene of paramount importance;
- F (b) there were obvious contradictory statements about the deceased's departure. When questioned about the deceased's whereabouts, Alex and Luna claimed that she had 'left early for a 10.00am meeting'. However, Constable Fabian saw a woman's handbag and several mobile phones on the tables and Luna had retrieved the deceased's clothes from the bathroom/wardrobe room in the master bedroom.
- G This conduct revealed Luna's intimate knowledge of the deceased's personal belongings stored in her personal space, directly contradicting the claim that the deceased had left. The deceased's handbag, passport, mobile phones, and other personal belongings were all present, yet Alex and Luna maintained that she had departed. Any competent investigating officer should have recognised this glaring inconsistency as evidence of deception;
- H (c) the failure to preserve evidence: there was a failure to collect and collate relevant and vital evidence from Unit 20–5, including the deceased's personal belongings found there;
- I (d) inadequate forensic procedures: PDRM failed to record the temperature of the deceased's body upon discovery, which was crucial evidence to determine the time of her death;
- (e) there was a failure to investigate the multiple footprints on the balcony of

- Unit 20–5. Constable Fabien discovered significant evidence on the balcony of many footprints all over the balcony in every direction. Constable Fabian recognised that it pointed to a potential homicide. However, the forensic team was summoned hours later, and had only arrived at 11pm, a delay of eight hours. By that time, as testified by Detective Sergeant Mohan, heavy rain had occurred, effectively washing away crucial evidence including the footprints and traces of apple cider that may have contained narcotics; A
- (f) there was improper handling of suspects: despite detaining Alex and Luna, PDRM failed to place proper restrictions on their use of mobile phones, allowing them to contact their cleaner Nur Mastura to clean Unit 20–5 with the intention to remove forensic evidence before the forensic team could collect evidence. When the police returned after 10pm, crucial evidence had been destroyed through cleaning, which was facilitated through their own negligence; B
- (g) the failure to prevent evidence tampering: the action/inaction of PDRM resulted in Unit 20–5 cleaned before forensic examination that constituted a fundamental breach of investigative protocol; C
- (h) there was a failure to analyse the CCTV evidence properly. The CCTV footage from the night before showed the deceased with Alex and Luna. Cap Square Residence Building Manager had noted that the latter two were known for disruptive behaviour, always intoxicated when they returned at night. There was no finding made by the investigation from the analysis of the CCTV — whether to corroborate their conclusion of suicide or otherwise; and D
- (i) there was physical evidence of a struggle that was ignored. The investigation dismissed crucial physical evidence without a proper investigation. There were grip marks found on the deceased’s upper arms and unusual trauma to her head that were inconsistent with a simple fall. The presence of Alex’s DNA under the deceased’s nail clippings confirmed in the DNA report dated 28 February 2018 was dismissed by the second defendant with the speculative assumption that it resulted from consensual sexual activity, despite the absence of any evidence to support his theory. E
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THE INQUEST

[11] The plaintiff was not satisfied nor convinced by the conclusions of the initial investigation and had escalated her pleas to the Dutch government. The Dutch government interceded that resulted in the referral of the case to the Malaysian Federal Criminal Investigation Department (‘CID’). I

A [12] The second defendant assumed the role of the investigating officer from Sergeant Haliza. However, he continued to investigate the case under the scope of suicide.

B [13] Resulting from the plaintiff's dissatisfaction with the findings of the initial autopsy by HKL, she repatriated the deceased's remains to the Netherlands. A second autopsy was conducted by Dr Frank van der Goot. His findings significantly refuted the initial autopsy findings by HKL. With the substantial discrepancies, the plaintiff again successfully obtained the assistance of the Dutch government that prompted the formal inquest convened by the Attorney General's Chambers ('AGC') on 13 April 2018.

C [14] On 8 August 2018 the inquest commenced before the coroner under ss 328 to 341 of the Criminal Procedure Code ('the CPC'). A total of 22 witnesses were called.

D [15] Dr van der Goot's testimony at the inquest provided compelling evidence that challenged the defendant's conclusions. He identified substantial amounts of alcohol and four distinct narcotics in the deceased's body that may have led to hyperthermia, potentially being the primary cause of death.

E [16] He had observed unusual trauma on the inner skin of the head and grip marks on the deceased's upper arms, which were inconsistent with a fall from height. His analysis of rigor mortis evidence suggested that rigor mortis had set in before the deceased's fall.

F [17] He had disputed the Malaysian pathologist's oversimplified theory regarding blood coagulation. He had explained that coagulation can persist even after death.

G [18] On 8 March 2019 the coroner delivered her verdict of 'misadventure' who found that the death was accidental rather than suicide or murder. That verdict itself rebuked the initial police investigation findings that the deceased's death was suicide.

H [19] At this juncture, the handling of the initial investigation or rather a lack of, is telling. The coroner's verdict was a complete rejection of the defendants' suicide theory. It demonstrated the shoddy nature of the initial investigation.

I THE 2019 HIGH COURT ORDER

[20] The plaintiff was discontented. She pursued an appeal at the High Court of Kuala Lumpur. On 22 November 2019, Justice Collin Lawrence Sequerah overturned the coroner's decision. It was replaced with a verdict of

‘death by person or persons unknown’ and compelled the AGC to direct PDRM to recommence investigations accordingly. A

[21] Following this 2019 High Court order, the case was reclassified as murder under s 302 of the Penal Code. This judicial intervention vindicated the plaintiff’s persistent pursuit of justice and exposed the fundamental inadequacies of the initial investigation. B

[22] The significance of the 2019 High Court order is that it represented a judicial finding that the circumstances of the deceased’s death warranted investigation as a potential homicide. This directly contradicted the defendant’s premature classification as suicide. C

[23] Though the 2019 High Court order overturned the coroner’s verdict, it further exposed the inadequacy of the initial police investigation. D

INVESTIGATION BY PDRM

[24] Based on the comprehensive evidence, the second defendant testified that the investigations were still continuing — ‘masih diteruskan’ and that the case ‘tidak ditutup’ as of the trial date. However, the defendants failed to offer any fact or evidence to show that the investigation was in reality, continuing. The investigation has effectively come to a standstill with no meaningful progress since 2019. E

[25] There was a task force established around 27 November 2019 (approximately five days after the 2019 High Court order). It was led by Ketua Jabatan Siasatan Jenayah, IPK Kuala Lumpur. The second defendant was retained as the investigating officer. There seemed to be multiple departments involved (D9 special investigation unit, narcotics). Nothing was adduced to this court to show the progress or continued investigation from any of the departments or units. F

[26] A forensic committee was established — Jawatankuasa Pakar Perubatan Patologi Forensik to get a second opinion on both the Malaysian and Dutch autopsy reports. No documented outcomes were presented to this court. G

[27] There was an INTERPOL Blue Notice issued in November 2020 (one year after the 2019 High Court order), and at around the same time this suit was filed. It was to seek assistance on the whereabouts of Alexander William Johnson and Lunara Almazkyzy. Then just before the commencement of this trial, on 9 October 2024, IPD Dang Wangi issued a letter to apply for the I

A follow up of the Blue Notice. The second defendant testified that it was ineffective — his own words were ‘Pada pendapat saya tidak memberi apa-apa kesan’.

B [28] No issuance of the more effective Red Notice despite DNA evidence implicating the individual(s). When questioned about issuing the more effective Red Notice, the second defendant disagreed with its necessity.

C [29] In October 2020, the second defendant had requested from the Dutch authorities copies of the Dutch post-mortem reports, crime scene photos and other documents that were already in the defendants’ possession since 2018.

D [30] The second defendant claimed that there were recordings of new witness statements and continued previous witness statement recordings. There was also a re-visit to the crime scene. However, the defendants failed to provide any corroborating evidence to show that this was done.

E [31] The second defendant had also claimed that there were briefings to the Netherlands Embassy, but no documents were produced although he stated that copies were in his investigation papers. Nothing was produced to this court to ascertain the truth and/or accuracy of his claims.

THIS COURT’S ASSESSMENT OF CONTINUED FAILURES AND LACK OF PROGRESS

F [32] Evidence showed that the second defendant, a senior officer with experience, who was the first to witness the deceased’s body had failed to have reasonably suspected that the circumstances showed that the deceased, unclothed may have crashed from a height that naturally raised immediate concerns about the possibility of foul play. There was no consideration of homicide, which was ruled out completely.

G [33] Sergeant Haliza had in the very beginning suspected homicide rather than suicide. Instead, though there were indications of potential criminal involvement, the second defendant had promptly (on the same day) and arbitrarily classified the incident as suicide.

H [34] When the taskforce was formed following the 2019 High Court order, this court noted that the same compromised personnel was retained (the second defendant) despite clear conflict of interest.

I [35] Additionally, the case was reclassified from SDR to s 302 of the Penal Code which is the murder investigation after the 2019 High Court order, not proactively by the first and second defendants.

[36] Notably, critical evidence emerged during the investigation that further highlighted negligence on the part of investigation. A DNA report dated 28 February 2018 revealed traces of Alex's DNA found in the nail clippings of the deceased. Despite this crucial evidence, Alex and Luna were permitted to leave Malaysia on 29 March 2018 — approximately one month after the DNA report was available.

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[37] The second defendant testified that despite receiving the DNA evidence and being suspicious ('curiga'), no immediate action was taken to detain the suspects before their departure.

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[38] This sequence of events represented a fundamental failure in the investigation procedure. The presence of DNA evidence linking a suspect to the deceased, combined with the suspicious circumstances of death, should have prompted immediate action to prevent the suspect's departure from the jurisdiction.

D

NEGLIGENCE IN THE CONDUCT OF INVESTIGATION 2017–2019

[39] This court now turns to examine the legal principles applicable to the defendants' conduct and the plaintiffs claims. The duty of care owed by law enforcement authorities has been recognised in various jurisdictions. In *Michael and others v Chief Constable of South Wales Police and another (Refuge and Liberty intervening)* [2015] 2 All ER 635, the Supreme Court of the United Kingdom opined that failure of authorities to act reasonably in matters of public safety constitutes a breach of duty.

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Duty of care

[40] PDRM has the statutory duty under s 20 of the Police Act 1967 ('the Police Act') to investigate crimes properly. As provided for in s 3(3) of the Police Act, the duty of care owed by PDRM extends to preserve public order and ensure that criminal conduct is promptly prevented, detected, and prosecuted. The procedural requirements and investigative standards can be found at ss 107A and 112 of the CPC.

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[41] In this case, law enforcement officers of PDRM, have a duty of care to conduct investigations with reasonable diligence and professionalism. More so when the deceased's death was unexplained or suspicious. This duty extends to foreseeable parties such as the plaintiff, who as the mother of the deceased, relied on PDRM to conduct a diligent and thorough investigation.

I

Breach of duty of care

- A [42] The evidence overwhelmingly establishes that the defendants breached their duty of care. The second defendant had conducted himself in a manner that demonstrated blatant disregard for and gross dereliction of duties incumbent upon him. The breach is manifestly evident through the defendants' failure to adhere, to requisite standards of reasonable diligence, impartiality and professional competence. See *Kent v Griffiths and other* [2001] QB 36.
- B
- C [43] This court finds that specific breaches are proven on a balance of probabilities which are:
- D (a) premature classification: the classification of the case as suicide on the same day without conducting a proper preliminary investigation or forensic analysis;
- E (b) crime scene management failures: there was a failure to secure Unit 20–5 as a potential crime scene where the deceased was last seen alive;
- F (c) evidence preservation failures: PDRM had allowed Unit 20–5 to be cleaned before forensic examination, resulting in potential evidence destruction;
- G (d) inadequate witness/suspect handling: PDRM had failed to properly restrict the witnesses/suspects' communication that enabled potential evidence tampering;
- H (e) forensic evidence neglect: PDRM failed to collect crucial evidence such as body temperature readings and failed to accord proper consideration to grip marks and other injuries inconsistent with suicide; and
- I (f) expert evidence dismissal: there is an apparent refusal to properly consider Dr van der Goot's expert findings that challenged the suicide theory.
- [44] The case of *Thayanantha Rao a/l Bala Khrishna v Sjn Muhammad Izwan bin Izham & Ors* [2024] 11 MLJ 447 established that failure to carry out basic investigative practices constitutes 'sheer negligence and breach of statutory duties in the performance of a police function'. The evidence in this case involves even more egregious failures.
- [45] In *Zaidah bt Ismail v Inspektor Rabiatal Adawiyah bt Mohd Noor & Ors and another appeal* [2021] MLJU 2109, the Court of Appeal held that investigating officers must 'objectively analyse the facts to make proper and valid judgment'. The second defendant failed this fundamental test by prematurely concluding suicide without an objective analysis of suspicious circumstances.

Causation and damages

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[46] The harm suffered by the plaintiff is a direct and foreseeable consequence of the defendants' breach of duty. As established by the Privy Council in *Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd, The Wagon Mound* [1961] 1 All ER 404, harm is not too remote if it is a natural or foreseeable consequence of the breach. See *Government of Malaysia & Ors v Jumat bin Mahmud & Anor* [1977] 2 MLJ 103.

B

[47] The plaintiff's emotional distress, mental anguish, and prolonged uncertainty of her daughter's death, and the consequent inability to achieve closure flows directly from the defendants' failure to conduct a diligent investigation. The defendants' negligence denied the plaintiff the opportunity to seek redress and accountability, compounding her grief and prolonging her suffering.

C

D

[48] In *Gan Kim Thye v The Union Omnibus Co Ltd* [1969] 1 MLJ 186, the court established that the plaintiff must prove that the breach caused or materially contributed to the damage suffered. This court finds that the test is clearly satisfied in this case.

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Breach of statutory duty

[49] The plaintiffs claim for breach of statutory duty is founded on well-established legal principles in *Hu Sepang v Keong On Eng & Ors* [1991] 1 MLJ 440. The following elements for the plaintiff to establish are:

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- (a) the statute allows a cause of action in tort;
- (b) the defendant must be in breach of statutory duty;
- (c) a duty must be owed to the plaintiff; and
- (d) the statutory breach must have caused the damage.

G

[50] The defendants' duties are codified in several key legislative instruments. The Police Act expressly mandates police officers to preserve public order and ensure that criminal conduct is promptly prevented, detected and prosecuted. Our CPC — ss 107A and 112 outline procedural requirements and investigative standards for the law enforcement authorities. Chapter 32 of the CPC provides the framework for the investigation of deaths.

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[51] These provisions impose mandatory duties rather discretionary powers. As established in *Tan Chye Choo & Ors v Chong Kew Moi* [1966] 2 MLJ 4, when a statute imposes mandatory duties for public benefit, failure to comply constitutes a clear breach of statutory obligations.

- A [52] Evidence in this case establishes multiple breaches of statutory duties. For one, there was a breach of s 107A of the CPC as there was a failure to properly provide updates to the plaintiff and family members about the investigation progress — that is a breach of s 107A of the CPC.
- B [53] As per the observed findings stated above, there was a failure to ensure the conduct investigation in accordance with the prescribed standards and procedures. Refer to s 112 of the CPC.
- C [54] There were failures to ensure that the criminal conduct — as found by the 2019 High Court order — was promptly detected and prosecuted. There is also the Inspector General's standing orders. There were apparent multiple breaches of standard operating procedures (SOPs for the death investigation of the deceased).
- D [55] The second defendant's own testimony reveals his failure to comply with basic statutory requirements. Despite being questioned about his negligence in following SOPs, he steadfastly denied any wrongdoing. It demonstrated either ignorance of his duties or willful disregard thereof.
- E [56] This court is mindful of the principles established in *Robinson v Chief Constable of West Yorkshire Police* [2018] 2 WLR 595, where the UK Supreme Court held that while police generally owe no duty of care in the manner of investigation, exceptions may arise in specific circumstances. However, the
- F present case is distinguishable as it concerns not merely the manner of investigation, but fundamental failures to investigate at all in circumstances that clearly warranted such investigation.
- G [57] It was acknowledged in *Joseph all Anthony (estate administrator Sebastian all Joseph, deceased) & Anor v Dr Muhamad Arif bin Mohamad Rasat & Ors* [2023] MLJU 1346; [2023] 8 CLJ 234 that courts are generally reluctant to impose investigative duties on police. Nevertheless, this reluctance does not extend to cases where there has been a complete abdication of investigative responsibility in circumstances demanding immediate attention.
- H [58] This court finds breaches of statutory duty on the part of the defendants caused the plaintiff's continued suffering over the inability to obtain closure on her daughter's cause of death.
- I NON-COMPLIANCE WITH THE 2019 HIGH COURT ORDER
- [59] The 2019 High Court order is clear and unambiguous. It directed that this case be reclassified as 'death by person or persons unknown' and compelled the AGC to direct the PDRM to recommence investigations as a murder case

under s 302 of the Penal Code.

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[60] Despite this clear judicial directive, the evidence shows that the defendants have failed to comply meaningfully with the 2019 High Court order. The same compromised investigating officer was retained despite a clear conflict of interest.

B

[61] Ineffective measures like the issuance of the Blue Notice were employed despite availability of more robust tools like the Red Notice. No meaningful progress has been made since 2019, with the investigations effectively at a standstill. No suspects have been apprehended or charged despite DNA evidence and judicial reclassification.

C

[62] The second defendant testified that the investigations were still continuing or in his own words ‘masih diteruskan’ and the case is not closed (‘tidak ditutup’). However, the defendants failed to offer any evidence to substantiate continuing investigation efforts. The investigation has effectively stagnated with no significant progress since the 2019 High Court order.

D

[63] This failure to comply with a clear judicial directive constitutes contempt of court and further breach of statutory duties on the part of the defendants. As submitted by the plaintiff, if there were genuine developments in the investigation, it was incumbent upon the defendants to communicate such progress transparently. In particular where the plaintiff in this case has been pressing for updates, and subsequently the filing of this lawsuit.

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[64] Based on the directive of the 2019 High Court order and the evidence that there was non-compliance, there are bases why mandamus ought to be awarded. Evidence moreover demonstrated the ineffectiveness of the task force established. There is a clear public duty that corresponds with a private right — that of the plaintiff’s. The directive of the 2019 High Court order was not unambiguous, and civil damages alone cannot compel a proper investigation.

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[65] Noted additionally is the continuing breach and urgent need to address the situation where it has been eight years since the investigation started. So, this court is of the considered view that intervention is justified as the courts have inherent powers to ensure compliance with judicial orders. The 2019 High Court order was not a mere suggestion but a binding directive requiring proper execution.

H

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A MALFEASANCE IN PUBLIC OFFICE

[66] Malfeasance involves the commission of an unlawful act in an official capacity. The defendants' premature classification of this case as suicide despite clear indication of potential homicide, constitutes an unlawful exercise of discretion that prejudiced the investigation. See *Jay Laxmi Salt Works (P) Ltd v The State of Gujarat* 1994 SCC (4) 1; JT 1994 (3) 492.

[67] Having carefully considered the evidence adduced before this court, it is this court's finding that the defendant's conduct throughout the investigation into the death of the deceased falls short of the standards reasonably expected of law enforcement officers. The evidence reveals a concerning pattern whereby the defendants reached conclusions regarding the cause of death without adequately investigating material evidence that suggested alternative possibilities.

[68] This court notes that substantial forensic evidence, including toxicological findings revealing multiple substances in the deceased's system and physical injuries inconsistent with the proposed cause of death, was not sufficiently explored or explained. While investigators must exercise professional judgment, the failure to pursue obvious lines of inquiry that arose from the available evidence represents a significant departure from accepted investigative standards and statutory obligations.

[69] This court is particularly concerned by the defendants' treatment of expert forensic evidence, specifically the findings of Dr van der Goot, whose analysis indicated that certain injuries to the deceased occurred hours prior to death and were inconsistent with a fall from height. The defendants' failure to adequately reconcile these findings with their conclusions, or to provide cogent reasons for rejecting such expert evidence, constitutes a material deficiency in the investigation.

[70] Additionally, the decision to issue only a Blue Notice through INTERPOL, rather than pursuing more robust enforcement measures to secure the attendance of key witnesses who subsequently left the jurisdiction, appears to have been insufficiently considered given the significance of their potential testimony. These investigative decisions, viewed cumulatively, suggest an approach that prioritised expediency over thoroughness.

[71] Upon reviewing the totality of the evidence, this court concludes that the defendants' conduct while perhaps not deliberately malicious, demonstrates a concerning disregard for their statutory duties and the rights of the deceased's family. The systematic failure to provide meaningful updates to the victim's family, the reluctance to reclassify the investigation despite

emerging evidence, and the persistent adherence to initial conclusions in the fact of contradictory expert findings reflect an investigative approach that was insufficiently responsive to evolving evidence.

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[72] While recognising the challenges inherent in complex investigations, this court finds that the defendants' conduct fell below the standard of care reasonably expected and has resulted in a denial of justice to the plaintiff. The cumulative effect of these investigative deficiencies has undermined confidence in the process and necessitates appropriate judicial intervention to address the harm suffered by the plaintiff.

B

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MISFEASANCE IN PUBLIC OFFICE

[73] Misfeasance involves the improper performance of a lawful act. The defendants' handling of the investigation, whilst within their authority, was conducted improperly and negligently, failing to meet required standards. The investigation was marked by significant procedural deficiencies and departures from established investigative protocols.

D

[74] This court notes that the investigation failed to employ advanced forensic methodologies that could have provided crucial temporal insights in the trauma suffered by the deceased. Furthermore, the defendants did not adequately cross-verify the testimonies of key witnesses against the available physical and forensic evidence, which represents a fundamental investigative omission that could have clarified important chronological inconsistencies and potentially revealed alternative explanations for the events in question.

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[75] The evidence reveals that Dr van der Goot's report provided critical insights regarding the timing and causation of the deceased's injuries, which pointed to circumstances that warranted further investigation. The defendant's failure to effectively reconcile these conflicting forensic findings, or to provide satisfactory explanations for dismissing the expert analysis, undermines the integrity of the investigative process. This represents a material failure to properly consider and evaluate significant evidence that was directly relevant to determining the cause and circumstances of death.

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[76] Following the 2019 High Court order that resulted in the establishment of a specialised task force, this court observes that the defendants failed to ensure the effective operation and accountability of this investigative mechanism. The evidence indicates that the task force did not produce substantive results or provide meaningful updates to the interested parties, particularly the plaintiff and the deceased's family.

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A [77] It is recognised that investigation may take time to yield results, the apparent lack of transparency and accountability in the task force's operations, combined with the absence of any demonstrable progress or communication, suggests a failure to properly manage and execute the reinvestigation mandate. This conduct, when viewed alongside the earlier investigative deficiencies, demonstrates a pattern of deficient performance of statutory duties that has resulted in prejudice to the plaintiff's legitimate interests in obtaining closure and understanding regarding her daughter's tragic death.

C [78] Applying the legal principles of *Three Rivers District Council and others v Governor and Company of the Bank of England and Cross (No 3)* [2000] 2 WLR 1220 and adopted by the Court of Appeal in *Datuk Seri Khalid bin Abu Bakar & Ors v N Indra a/p P Nallathamby (the administrator of the estate and dependent of Kugan a/l Ananthan, deceased) and another appeal* [2015] 1 MLJ 353, the evidence supports a finding of reckless indifference to the limits of proper investigative procedure and the probable consequence of such disregard.

NON-FEASANCE IN PUBLIC OFFICE

E [79] Non-feasance involves the failure to perform a required duty. The defendants had failed to properly secure and examine the crime scene. The evidence establishes that non-feasance arises from the failure to perform duties mandated by law, and this court observes several material omissions that undermined the investigative process.

G [80] The defendants had failed to properly follow up on expert forensic evidence. No adequate investigation was shown on one key forensic evidence which was the DNA material found under the deceased's fingernails, which could have provided crucial investigative leads. The defendants did not sufficiently address or reconcile the significant discrepancies between the initial Malaysian autopsy findings and the subsequent forensic analysis conducted by Dr van der Goot. These omissions represent a failure to pursue obvious avenues of inquiry that could have materially advanced the investigation and provided greater clarity regarding the circumstances of the deceased's death.

I [81] There were failures to prevent evidence tampering and to detain witnesses and/or suspects when DNA evidence emerged. The evidence indicates that the defendants did not implement enough safeguards to ensure that individuals who were present at the scene and possessed material information remained available for questioning throughout investigation.

[82] The subsequent issuance of a Blue Notice through INTERPOL in 2020, several years after the witnesses had departed Malaysia, appears to have

been a scanty and belated response to what should have been an immediate investigative priority. This failure to act promptly and decisively to secure witness cooperation significantly compromised the investigation's ability to establish a complete factual record and deprived the process of potentially crucial testimony. Even later down the timeline, the defendants had failed to issue the proper international alerts.

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[83] This court acknowledges that investigations must sometimes proceed confidentially. In this case however, evidence shows that the defendants had failed in their duty to provide appropriate communication and updates to the plaintiff and the deceased's family. The substantial period of time represents a failure to balance investigative requirements with the legitimate interests and rights of the deceased's family. The cumulative omissions, when viewed together, demonstrate a failure to fulfill the fundamental duties incumbent upon investigating authorities and have resulted in material prejudice to the plaintiff's rights and interests in obtaining the trust and closure regarding her daughter's death.

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[84] This court referred to the case of *Hill v Chief Constable of West Yorkshire* [1988] 2 All ER 238. This case dealt with the issue of wide discretion on the part of the police in the discharge of their duties. The following is part of Lord Keith of Kinkel's speech when speaking for the House of Lords at pp 240–241:

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By common law police officers owe to the general public a duty to enforce the criminal law: see *R v Metropolitan Police Comr, ex p Blackburn* [1968] 1 All ER 763; [1968] 2 QB 118. That duty may be enforced by mandamus, at the instance of one having title to sue. But as that case shows, a chief officer of police has a wide discretion as to the manner in which the duty is discharged. It is for him to decide how available resources should be deployed, whether particular lines of inquiry should or should not be followed and even whether or not certain crimes should be prosecuted. It is only if his decision on such matters is such as no reasonable chief officer of police would arrive at that someone with an interest to do so may be in a position to have recourse to judicial review. So the common law, while laying on chief officers of police an obligation to enforce the law, makes no specific requirements as to the manner in which the obligation is to be discharged. That is not a situation where there can readily be inferred an intention of the common law to create a duty towards individual members of the public.

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[85] In the premises, this court finds that the evidence in this case supports the findings of malfeasance, misfeasance and non-feasance on the part of the defendants.

I

DAMAGES

[86] The plaintiff has proven to the satisfaction of this court that she has suffered prolonged emotional and psychological trauma as a direct result of the

- A defendants' negligence, breach of statutory duties and the noncompliance of the 2019 High Court order. This court had the opportunity to see and hear her testimony. Her demeanour has been considered by this court. The loss of a child is profound anguish. The plaintiff's suffering has been immeasurably compounded by the defendants' investigative failures.
- B [87] The plaintiff's financial expenses exceed RM500,000 that include:
- C (a) travel and accommodation expenses for her multiple trips to Malaysia;
- (b) her legal fees and costs for pursuing justice;
- (c) the expatriation of the deceased's remains to the Netherlands;
- (d) the costs of the second autopsy by Dr van der Goot (which were approximately €20,000); and
- D (e) other related expenses necessitated by the defendants' failures.
- [88] The circumstances warranted aggravated damages as defined in *Law of Tort* (9th Ed) 2009 by Professor John Cooke. Aggravated damages are:
- E awarded where there is outrage to person or property and are best regarded as compensatory ... to compensate for injury to the claimant's pride or feelings.
- [89] In *Ley v Hamilton* [1935] 153 LT 384 the House of Lords at p 386 Lord Atkin explained that aggravated damages compensate for injuries that cannot be precisely quantified, including the:
- F insult offend or the pain of a false accusation.
- [90] Exemplary damages are warranted in this case. It was established in *Datuk Seri Khalid bin Abu Bakar & Ors v N Indra a/p P Nallathamby (the administrator of the estate and dependent of Kugan all Ananthan, deceased) and another appeal* [2015] 1 MLJ 353 that exemplary damages serve punitive and deterrent functions against gross misconduct by public officers.
- G
- H [91] The award of exemplary damages is justified in cases involving 'oppressive, arbitrary or unconstitutional action by servants of the government'. The defendants' conduct in this case falls squarely within this category.
- I [92] Exemplary damages here serve to punish the abuse of public powers and deter similar misconduct in the future. It is to vindicate the rule of law and expresses this court's disapproval of such conduct.

LIABILITY OF THE DEFENDANTS

A

[93] The foundational legislative framework for government liability in tort is the Government Proceedings Act 1956 ('the GPA'). The law under ss 5 and 6 of the GPA establishes that the Government of Malaysia (the fourth defendant) shall be liable for wrongful acts of public officers in the same manner as a principal is liable for acts of an agent. However, no proceeding lies against the fourth defendant unless proceedings would have lain against the officer personally. And that officer must have been employed by the fourth defendant and paid from government revenues.

B

C

[94] Those elements are fulfilled in this case — as established by the Federal Court in *Kerajaan Malaysia & Ors v Lay Kee Tee & Ors* [2009] 1 MLJ 1; [2009] 1 CLJ 663, the officer who was responsible for the said tortious acts must be made a party to the proceedings and his liability established before the government can be made vicariously liable as principal.

D

[95] The first defendant bears direct liability for institutional failures that transcend individual officer misconduct. This court finds evidence of systemic negligence in supervisory failure where there was a failure to ensure proper investigative standards were maintained despite obvious procedural breaches becoming apparent. There were also failures post 2019 High Court order with the retention of the compromised second defendant in the task force despite a clear conflict of interest. The first defendant had also allowed the task force to become effectively dormant without meaningful supervision or accountability.

E

F

[96] The principle established in *Thayanantha Rao* applies here — failure to carry out basic supervisory practices in police functions constitutes negligence and breach of statutory duties.

G

[97] Under the GPA, the first defendant is vicariously liable for the proven negligence and statutory breaches of the second defendant, who was acting within the scope of his employment as a police officer.

H

[98] This court finds the second defendant directly and personally liable for multiple breaches of duty:

- (a) premature classification with his hasty determination of suicide without adequate preliminary investigation;
- (b) crime scene management failures when he had failed to secure Unit 20–5 and preserve crucial evidence;
- (c) investigative negligence as detailed in this judgment above on multiple procedural failures; and

I

- A (d) contempt of judicial authority when he maintained the suicide classification even after the 2019 High Court order required reclassification.
- B [99] The evidence establishes that the second defendant was the primary decision-maker whose personal acts and omissions directly caused the investigative failures. His conduct falls squarely with the parameters of negligence, statutory breach, and misfeasance in public office (see *Three Rivers District Council*).
- C [100] As against the third defendant, its liability must be measured against the principles established by *Joseph Anthony & Anor* which recognised the judicial reluctance to impose investigative duties on senior government officials. Nonetheless, this case presents distinguishable circumstances.
- D [101] For one, the third defendant bears policy oversight responsibilities for police operations. So, it has administrative oversight responsibilities. Next, it has extradition and diplomatic functions. In this case there were specific administrative failures in facilitating the pursuit of suspects and/or witnesses
- E who departed Malaysia. Third, the third defendant has the administrative responsibility for ensuring judicial directives like the 2019 High Court order are implemented.
- F [102] There is limited liability primarily for administrative failures rather than investigative negligence. The liability is several rather than joint for specific administrative breaches within the ministerial purview.
- G [103] Though the fourth defendant is not in any sense a tortfeasor, it may be vicariously liable under ss 5 and 6 of the GPA — see *Bala Krishnan Appala Naidu v Ketua Inspektor Prabakaran Shanmugam & Ors (No 2)* [2010] MLJU 2223; [2011] 2 CLJ 890. The fourth defendant's liability is established through:
- H (a) the proven liability of the first and second defendants;
(b) these officers were acting within their official capacity; and
(c) the officers being employed and paid from government revenues.
- I [104] The defendants relied heavily on *Joseph Anthony & Anor* to argue against police duty of care in investigations. Conversely, this court finds the present case distinguishable on several critical grounds:
(a) unlike the general duties in *Joseph Anthony & Anor*, this case involves specific non-compliance with the 2019 High Court order;

- (b) the evidence establishes breaches of specific statutory provisions under the Police Act and the CPC; A
- (c) the evidence supports findings of misfeasance in public office, which involves a higher standard than mere negligence; and
- (d) this case involves not merely questionable investigative methods, but fundamental failures to investigate suspicious circumstances. B

[105] Therefore, this court concludes that all the defendants are liable, albeit with different bases and degrees of responsibility. The second defendant is primarily personally liable for direct acts and omissions in negligence, breach of statutory duty and non-compliance with the 2019 High Court order. The first defendant is vicariously liable for the second defendant's acts and omissions plus direct institutional liability. The third defendant has limited liability for the specific administrative failures. The fourth defendant is vicariously liable only under the statutory framework. C D

[106] These findings are not disparagements of law enforcement generally, but identification of specific institutional and personal failures that require correction to maintain public confidence in the administration of justice and the rule of law. E

QUANTUM OF DAMAGES

[107] This case represents a profound failure of Malaysia's law enforcement system. The death of an 18-year-old young woman under suspicious circumstances should have prompted the most thorough and professional investigation. Instead, the evidence reveals a litany of failures, incompetence, and disregard for proper procedure. F

[108] The plaintiff, aside from handling her own grief, has had to endure years of institutional indifference and investigative failure. The defendants' conduct has not only denied justice to the deceased but has also brought discredit upon Malaysia's law enforcement system. G H

[109] This court accepts the plaintiffs submissions that the concept of the sanctity of life holds that human life is sacred, precious, and inviolable. It is the responsibility of the State to protect human life and provide reparations when appropriate. The defendants have failed in this fundamental duty. I

[110] Having considered all the evidence and submissions, this court assesses and determines the appropriate quantum damages as follows:

- (a) general damages — RM500,000 for emotional distress, mental anguish

- A** and loss of closure which are from the investigative failures and associated financial expenses. The sum reflects the gravity of institutional failure in circumstances requiring the highest professional standards;
- B** (b) aggravated damages — RM300,000 for the high-handed and oppressive conduct on the part of the defendants. Additionally, for institutional indifference to the plaintiffs suffering and failure to treat the matter with appropriate gravity (see *Ashley v Chief Constable of Sussex Police (Sherwood intervening)*; *Ashley and another v Chief Constable of Sussex Police (Sherwood intervening)* [2008] 2 WLR 975); and
- C** (c) exemplary damages — RM300,000 to punish gross misconduct in public office, to deter similar failures in the future and to vindicate constitutional principles and the rule of law (see *Datuk Seri Khalid*).
- D** CONCLUSION
- E** [111] This case represents a significant failure in the discharge of investigative duties by law enforcement authorities. Undoubtedly this court recognises the challenges inherent in complex investigations but the evidence establishes multiple departures from accepted standards that have resulted in a denial of justice to the plaintiff.
- F** [112] This court's findings should not be interpreted as criticism of the police force generally, but rather as identifying specific institutional failures that require correction. The awards serve both compensatory and deterrent functions, emphasising that public authorities must discharge their duties with appropriate diligence and accountability.
- ORDERS OF THIS COURT
- G** [113] For the reasons set out above, this court makes the following orders:
- H** (a) judgment is hereby entered for the plaintiff against the defendants jointly and severally;
- (b) damages are awarded in the total sum of RM1.1m that comprises of the following breakdown:
- I** (i) general damages — RM500,000;
- (ii) aggravated damages — RM300,000; and
- (iii) exemplary damages — RM300,000.
- (c) interest on the judgment sum of 5%pa from the date of this judgment until full and final settlement;
- (d) costs awarded to the plaintiff in the sum of RM100,000;

- (e) the defendants are declared to have failed to carry out their duties as per the 2019 High Court order; and **A**
- (f) mandamus — the first defendant is directed to remove the second defendant from the current task force. PDRM is hereby instructed to re-commence the investigation as per the 2019 High Court order. PDRM is directed to brief the AGC every three months from the date of this judgment on the updates of the investigation. The AGC is best to deliberate on the sufficiency of evidence and the next step forthwith. **B**

Judgment was entered for plaintiff against defendants jointly and severally with costs of RM100,000; court awarded damages in total sum of RM1.1m; court declared defendants failed to carry out their duties as per the 2019 High Court order; court awarded mandamus. **C**

Reported by Dzulkarnain Ab Fatar **D**

E**F****G****H****I**